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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

Vol. 9

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OFFICE OF RESEARCH

Room 309, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803)734-3230

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House Week in Review

Having passed the half way point in the 1992 legislative session, the House of Representatives turned its attention to the 117 bills on its calendar.

On Thursday, one of the most significant bills of the 1992 legislative session was ratified at an act. H.3681, the Consolidated Government bill, was ratified. This legislation will give local governments the statutory provisions to consolidate government functions to reduce duplication of efforts. The constitutional amendment authorizing local government consolidation was approved in 1972.

Also ratified was S.1311, legislation allowing nurse practitioners to prescribe drugs, and H.4114, legislation authorizing an alternative method of certifying at-home schooling.

The House gave third reading Friday to S.555, which would expand the jurisdiction of the statewide grand jury to include investigations of public corruption and election law violations. Currently, the statewide grand jury has jurisdiction over pornography and drug trafficking offenses.

Also on Friday, H.4432, a bill which creates the felony crime of homicide by child abuse was given a third reading by the House and sent to the Senate for consideration. Also read a third time and sent to the Senate was H.4498, legislation that would require magistrates to attend training and pass a certification examination.

The House rejected several bills pending on its calendar. Among these was H.3314, legislation that would have prohibited corporal punishment in the schools. By a vote of 72-20, the House tabled H.3314, which had been pending on the second reading contested calendar since last session.

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Objections placed two government reform bills on the contested calendar. H.3211 and H.4330 would allow an initiative petition method of enacting statutes and constitutional amendments. Both bills were placed on the contested calendar.

Also placed on the contested calendar by objections was H.4278, a bill that would prohibit indirect solicitations for judgeships until after judicial screening.

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Bills Introduced

The following bills were introduced in the House of Representatives last week. Not all the bills introduced in the House are featured here. The bill summaries are arranged according to the standing committee to which they were referred.

Agriculture, Natural Resources and Environmental Affairs

Increasing Penalties for Domestic Animals Running at Large (H.4643, Rep. Jennings) This bill seeks to increase the penalties for permitting a domestic animal to run at large beyond ones property boundaries. The fine would be increased from \$25 to \$200 and the time of imprisonment from 25 to 30 days. The violator could receive both a fine and imprisonment.

Migrant Farm Workers Commission (H.4675, Rep. Beasley) This legislation revises the makeup of the 15 members of the Migrant Farm Workers Commission. The Commission would consist of six members from difference growers' associations, three members of different migrant advocacy groups, three representatives of nongovernmental service providers involved with seasonal or migrant workers, and three members of the public appointed by the Governor. One of the governor's appointees would serve as chairman. Representatives from various federal and state agencies would be authorized to attend meetings to act in an advisory capacity to the commission. These agencies include the U.S. Labor Department, S.C. Departments of Labor, Agriculture, Education, Health and Environmental Control, the Employment Security Commission and the Governor's Office.

Judiciary

Definition of Violent Crimes (H.4634, Rep. Lanford) This bill would expand the definition of violent crimes to include the injuring or killing of a person while driving under the influence of drugs or alcohol.

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Date of Nonpartisan Primary Elections in 1992 (H.4648, Rep. Scott)

Under this joint resolution, all nonpartisan primary elections in 1992 conducted after the resolution's effective date would be held on the fourth Tuesday in August. The filing deadline for 1992 nonpartisan primary elections would be noon on June 25. The terms of office for all nonpartisan offices that expire in 1992 would be extended or terminated to comply with this resolution.

Confidentiality of Sources (H.4650, Rep. Wilkins) This legislation would give the news media the privilege of not disclosing information or other items in legal proceedings as long as the member of the media is not party to the proceeding. No disclosure in testimony may be compelled if an affidavit by the reporter or news agency states that the source was given an assurance of confidentiality. This privilege would pertain to judicial, legislative or administrative proceedings and is absolute.

If there was no assurance of confidentiality to the source by the news person or agency, the privilege against compelled testimony or production is qualified. Under this provision, members of the news media cannot be compelled to disclose any information unless the privilege is relinquished, or the party seeking the testimony can show that the information is material and highly relevant to the controversy in question, cannot be obtained by alternative methods, and is vital to the proper handling of the case by the party seeking the information.

In addition, publication of any information, document, or item obtained in gathering news does not constitute a waiver against compelled disclosure.

Civil Immunity for the Law Enforcement Training Council (H.4669, Rep. Wilkins). This legislation would provide civil immunity to any oral or written reports or other communications made in connection with the administration or regulations of the Law Enforcement Training Council. These communications could not be used as the basis for action in slander or libel suits if the communication was between a law enforcement officer, a law enforcement agency or its employees, or the Training Council or its employees.

County Board Appointments (H.4672, Rep. Harrelson) Under this legislation, members of county boards and commissions would be appointed directly by the county governing body instead of by the governor upon the recommendation of the county governing board.

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Reapportionment of Judicial Circuits (H.4673, Rep. 4673, Rep. Scott). This legislation would require that in connection with the election of circuit solicitors, the population of the state's judicial circuits must not vary more than 10 percent according to the most recent national census. This would require the General Assembly to reapportion the state's 16 judicial circuits every ten years following the federal census.

Beer and Wine Servers (H.4674, Rep. Farr). This legislation would make it illegal for persons under 21 to sell, serve or deliver beer or wine for the establishment where they work. The bill makes it unlawful for a supervisor to direct an under 21 employee to offer to sell or deliver beer or wine. Violation would be a misdemeanor punishable by a fine of \$300 and/or 30 days in jail. The legislation further states that only individuals 21-years-old or older may be lawfully employed to serve or remove beer, wine or alcoholic beverages in an establishment.

Elected Officials and Felony Records (H.4677, Rep. Stone). This proposed constitutional amendment would prohibit anyone who has been convicted of a felony in state or federal court or a violation of the election laws from holding elected public office. This prohibition would apply to those individuals who plead guilty or nolo contendere to these offenses. If passed by the General Assembly, this joint resolution would have to go before the voters in a statewide referendum at the next general election.

Mediation in Family Court (S.1253, Sen. Nell Smith) This bill would allow the family court to order the parties in domestic litigation to an initial meeting with a qualified professional mediator who would determine if mediation is appropriate to resolve the domestic dispute. The family court would assign the cost of mediation to one or more of the parties. Mediation would be voluntary and limited to issues such as custody and visitation. The mediator, an impartial third party, would not be able to testify about or divulge information from the mediation sessions without the consent of the parties.

Medical, Military, Public and Municipal Affairs

Juvenile Aftercare Program (H.4670, Rep. Wilkins). Under this legislation, the Juvenile Parole Board would employ a director of Parole and other staff necessary to carry out juvenile parole investigations. The director would serve at the pleasure of the Juvenile Parole Board and the employees would be employees of, and directly responsible to, the Juvenile Parole Board, not the Department of Youth Services.

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Expenses for this staff would be a line item in the DYS budget. Funding would be under the administrative control of the Juvenile Parole Board. This staff is provided in recognition of "the need to maintain autonomy and to provide a check and balance system" independent of the DYS commissioner.

Ways and Means

Greenhouse Tax Exemptions (H.4633, Rep. Lanford) This legislation would amend the tax codes so that greenhouses would be exempt from property taxes only if the produce grown inside is marketed or sold at wholesale. The ad valorem tax exemption would not apply if the produce or items sold are marketed or sold at retail even one time.

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Summary: No Fault Choice Automobile Insurance

The following is the latest summary of H.4521, the No Fault Choice automobile insurance bill, as reported out by the House Labor, Commerce and Industry Committee. The legislation will be up for debate before the full House this week. Thanks is given to the staff of the House LCI Committee for providing this summary.

H.4521

CONSUMER FREEDOM OF CHOICE IN MOTOR VEHICLE INSURANCE

SECTION (§)

§1: NO-FAULT POLICY PROVISIONS

- Gives motorists the opportunity to buy no-fault coverage or refuse it and retain tort liability coverage.
- Mandates no-fault premiums to be at least 15% lower than tort liability coverage for similar insureds. Freezes no-fault rates from Jan. 1, 1993, to Dec. 31, 1993.
- Minimum limits on no-fault are \$15,000 per person:
 - medical expenses;
 - up to \$200 per week for loss of income;
 - up to \$100 per week for replacement services;
 - \$5,000 death benefit.
- No-fault policies include mandatory 15/30/5 liability coverage.

§2: NO-FAULT/TECHNICAL CHANGE

Amends definition of automobile insurance to include no-fault policies.

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- §3: NO-FAULT/MAXIMUM LIMITS INSURER MANDATED TO WRITE**
Provides that no insurer is required to write no-fault coverages with limits higher than \$250,000 for additional no-fault coverage.
- §4: COLLATERAL SOURCE RULE**
Provides for juries to deduct from verdict any amount paid to the injured non-at-fault party from a collateral source.
- §5: MANDATE TO WRITE PHYSICAL DAMAGE COVERAGES**
Repeals the mandate to write physical damage coverages for an applicant or existing policyholder effective Sept. 30, 1992.
- §6: PUNITIVE DAMAGES/EXCLUDED FROM DEFINITION OF DAMAGES**
Amends the definition of "damages" to delete "punitive" and limit mandatory insurance coverage to actual damages only.
- §7: PUNITIVE DAMAGES/OPTIONAL COVERAGE**
-- Removes punitive damage from mandatory insurance coverage.
 **1-1/2% mandated minimum rate deduction.
-- Requires insurers to offer optional punitive damages coverage.
- §8: UNINSURED MOTORIST COVERAGE: STACKABLE/NONSTACKABLE**
-- Provides for non-stackable uninsured motorist coverage.
 **15% mandated minimum rate reduction.
-- Allows companies to offer stackable uninsured motorist coverage.
-- Makes benefits subject to assignment and subrogation.
- §9: UNDERINSURED MOTORIST COVERAGE: STACKABLE/NONSTACKABLE**
-- Provides for non-stackable underinsured motorist coverage.
 **18% mandated minimum rate reduction.
-- Allows companies to offer stackable underinsured motorist coverage

- Prohibits collection of underinsured benefits if entitled to uninsured benefits.
- Makes benefits subject to assignment and subrogation.

§10 - 13: COMPULSORY INSURANCE/TECHNICAL CHANGES

Makes technical changes to current code sections to allow for drivers with a safe driver discount to pay the uninsured motorist fee established in Section 14.

§14: COMPULSORY INSURANCE/UNINSURED MOTORIST FEE

- Allows persons with a safe driver discount to drive without insurance by paying a \$250 into an uninsured motorist fund.
- Fund to be used to reduce recoupment fee until Facility phased out, then to finance driver safety measures and enforce uninsured motorist laws.

§15: MANDATE TO WRITE LIABILITY COVERAGES

Eliminates mandate to write liability coverages for persons without a safe driver discount.

§16: ANTI-DISCRIMINATION CLAUSE

Adds "income" to existing grounds on which an insurer may not refuse to write or renew automobile insurance coverage. Current grounds include race, color, creed, national origin, or ancestry.

§17: WRITTEN REASON FOR DENIAL OF COVERAGE

Requires insurance company who denies an applicant coverage to tell the person in writing why he was turned down.

§18: JOINT UNDERWRITING ASSOCIATION ESTABLISHED

- Creates a Joint Underwriting Association to replace the Reinsurance Facility as the state's residual market mechanism.
- JUA will collect the recoupment fee until July 1, 1994.
- JUA to be self-sustaining after July 1, 1994.
- JUA will have two rates:
 - substandard rate is the self-sustaining rate.
 - standard rate is the rate for persons with a safe driver discount and will be 20% less than the substandard rate.

- Companies may not cede more than 35 percent of their business to the JUA.
- Insureds must be notified that coverage is being written through the JUA.

§19:

FOUR-TIER RATING SYSTEM

- Replaces the current 2-tier system (base and objective standards) with four tiers:
 - **Preferred:** Less than standard rate. Applicable to drivers with a safe driver discount.
 - **Standard:** Approved "base" rate. Applicable to drivers with a safe driver discount.
 - **Non-preferred:** More than the standard rate but less than substandard rate. Applicable to all risks.
 - **Substandard:** More than non-preferred rate but less than the JUA substandard rate. Applicable to all risks.
- Persons with a five year clean driving record must be written at the preferred or standard rate and cannot be ceded to the JUA.
- Persons with a ten year clean driving record must be written at the preferred or standard rate and cannot be ceded to the JUA.
- Company or agent shall provide written notice to the insured of the tier in which he is written and the reasons he was written at that tier.

§20:

NO SURCHARGE FOR CERTAIN VIOLATIONS

Prohibits surcharges for: first offense speeding over 20 mph if the driver has had a safe driver discount for the past three years; failing to dim lights; operating with improper lights; operating with improper brakes; or operating a vehicle in unsafe condition.

§21:

PENALTIES FOR DRIVING UNINSURED

Increases fines for knowingly operating an uninsured vehicle and adds an optional public service penalty.

§22:

AGENTS TO REVIEW FINES, OFFENSES WITH NEW INSURED

Requires an agent to review with a new applicant a list of driving offenses and the related fine and punishment, as well as possible increases in rates, additional surcharges, or loss of the safe driver discount.

- §23: JUA: COMPETITIVE BIDDING OF ADMINISTRATION; AGENT COMMISSION**
Requires administration of the JUA to be bid out on a competitive basis.

Provides that no new designated agents may be appointed after July 1, 1992.

Commissions paid agents for policies ceded to or placed in the joint underwriting association shall be set by the association's Board of Directors.

- §24 & 25: PROOF OF INSURANCE FOLLOWING MOVING VIOLATIONS**
[Sections 25 and 26 are identical except Section 25 amends the Insurance Code (Title 38) while Section 26 amends the Highway Department Code (Title 56).]
Requires officers to give a driver issued a ticket for a moving violation an insurance verification form to be completed and returned to the Highway Department by the driver.

- §26: REINSURANCE FACILITY ABOLISHED, DAs PHASED OUT**
Repeals Code Sections that create the Reinsurance Facility; provide for the Facility's duties and operation; and authorize the appointment of designated agents.

- §27: REPEAL CODE SECTION**
Repeals §38-77-930, which is inconsistent with Act 113 of 1991 (S.707). Act 113 permitted affiliated companies to write non-mandated coverages at different rate levels.

- §28: CESSION OF COVERAGES TO JUA**
Permits cession of certain non-mandated coverages: liability, no-fault, and uninsured motorist coverages for drivers without a safe driver discount. Currently, only coverages that a company is mandated to write may be ceded.

- §29: SEVERABILITY CLAUSE**
If any provision of the act is held unconstitutional or invalid the remainder of the act remains valid UNLESS §38-78-110 and 38-78-120 that establish no-fault are held unconstitutional or invalid, in which case the entire act is invalidated.

- §30: EFFECTIVE DATE**
Effective upon approval of Governor unless otherwise provided in the Act.